Jurisdictional Statement

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No. 81-1312

In the Supreme Court of the United States

OCTOBER TERM, 1981

GERALD P. CARMEN, ADMINISTRATOR OF GENERAL SERVICES, APPELLANT

v.

STATE OF IDAHO, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether Congress had the power to extend, by a majority vote of both Houses, the time within which states may ratify the proposed Equal Rights Amendment to the Constitution.

2. Whether a state legislature's rescission of its previous ratification of the Amendment nullifies the ratification.

3. Whether the validity of the extension and the effect of state rescissions are non-justiciable political questions.

4. Whether appellee States and state legislators have standing to claim that the extension is invalid and that the rescissions must be given effect.

5. Whether questions concerning the validity of the extension and the effect of the rescissions are ripe for judicial resolution.*

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*The Jurisdictional Statement of the National Organization for Women, Inc., *et al.*, in No. 81-1282, at ii n. *, identifies the parties to the proceeding below.

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JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the district court (81-1282 J.S. App. 1a-93a)[1] is not yet reported.

JURISDICTION

The judgment of the district court (81-1282 J.S. App. 94a-95a) was entered on December 23, 1981, and a notice of appeal to this Court was filed on

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[1] "81-1282 J.S." refers to the Jurisdictional Statement filed by the National Organization for Women, Inc., *et al.*, in No. 81-1282.

January 6, 1982 (App. A, *infra*, 1a-3a). The jurisdiction of this Court is invoked under 28 U.S.C. 1252.[2] The question of this Court's jurisdiction is discussed more fully at pages 7-10, *infra*.

CONSTITUTIONAL PROVISIONS, STATUTES AND RESOLUTIONS INVOLVED

Article V of the Constitution; 1 U.S.C. 106b; H.J. Res. 208, 86 Stat. 1523 (1972) (proposing the Equal Rights Amendment); and H.J. Res. 638, 92 Stat. 3799 (1978) (extending the time for ratification) are set forth at 81-1282 J.S. 3-5.

STATEMENT

1. In March 1972, Congress, by a two-thirds vote of each House, passed a resolution proposing the Equal Rights Amendment to the Constitution of the United States. H.J. Res. 208, 86 Stat. 1523. The Amendment would prohibit the United States and the states from denying or abridging "[e]quality of rights under the law * * * on account of sex." Section 3 of the proposed Amendment provides that it "shall take effect two years after the date of ratification." The preamble of the resolution, although not the proposed Amendment itself, specified that the Amendment "shall be valid to all intents and pur-

[2] In addition, a notice of appeal to the United States Court of Appeals for the Ninth Circuit was filed on January 6, 1982 (App. B, *infra*, 4a-5a). An amended notice of appeal, correcting a clerical error, was filed on January 12, 1982 (App. C, *infra*, 6a-7a). The appeal to the Ninth Circuit was docketed on January 11, 1982. With this Jurisdictional Statement we are filing a petition for a writ of certiorari before judgment to that court, invoking this Court's jurisdiction under 28 U.S.C. 1254(1) and 2101(e) should the Court conclude that it lacks jurisdiction under 28 U.S.C. 1252.

poses as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress."

During the seven years after the Amendment was proposed, 35 of the necessary 38 states ratified it and, pursuant to 1 U.S.C. 106b, transmitted official ratification documents to the Administrator of General Services (81-1282 J.S. App. 4a). Five of the ratifying states—appellee Idaho and Nebraska, Tennessee, Kentucky, and South Dakota—also passed resolutions purporting to withdraw their ratifications (*id.* at 4a & n.2). Idaho notified the Administrator of its rescission resolution (*id.* at 8a).

In August and October of 1978, each House of Congress passed, by a majority (but less than two-thirds) vote, a resolution extending the expiration date of the proposed Amendment by 39 months, until June 30, 1982. H.J. Res. 638, 92 Stat. 3799. The President signed the resolution on October 20, 1978 (81-1282 J.S. App. 5a). No state has ratified the Amendment since the extension resolution was passed.

Plaintiffs—Idaho and Arizona, a state that has not ratified the Amendment (81-1282 J.S. App. 8a-9a), and legislators from those two states—brought this suit in the United States District Court for the District of Idaho against the Administrator of General Services in May 1979. They claimed that the extension was invalid and that a state may rescind an earlier ratification of a proposed constitutional amendment until the amendment is ratified by three-fourths of the states. They sought a declaration to that effect and an injunction "directing the * * * Administrator * * * to remove the name of the State of Idaho from all official records which would indicate that Idaho has adopted the proposed * * *

amendment and [to] return its prior ratification documents * * * [and] enjoining the Administrator * * * from taking further account of any purported ratifications after the expiration of the original ratification period" (*id.* at 2a). Several legislators from the State of Washington, a state that has ratified the Amendment and has not purported to rescind its ratification (*id.* at 9a), subsequently intervened in support of the plaintiffs; the National Organization for Women intervened as a defendant (*id.* at 1a-2a).

2. The district court ruled in plaintiffs' favor on all issues, except for their request for injunctive relief. The court assumed the truth of the Idaho legislators' allegation that Idaho's initial ratification was intended to remain valid only until March 1979 (81-1282 J.S. App. 16a); based on that assumption, the court then held that the Idaho legislators had standing to raise both the rescission and the extension issues because "their individual votes, in favor of ratification for the seven-year time period or for the rescission of the prior ratification have been debased by the actions of" the Administrator (*id.* at 17a; footnotes omitted). The court ruled that the question whether the extension was valid was ripe for judicial review because "Idaho * * * acted to ratify for the seven-year period and Congress has abrogated that vote," thus creating a "constitutional impasse"; similarly, the effect of the rescission was ripe because the Administrator "has refused to remove Idaho's name from the official lists of those who are considered as having ratified, but has merely reported the rescission along with the ratification" (*id.* at 26a-28a). The court also cited several cases in which, it said, federal courts had resolved questions concerning the process to be used in ratifying a proposed

amendment before there was any suggestion that three-fourths of the states had ratified (*id.* at 26a).

The district court then held that the plaintiffs' claims were not non-justiciable political questions (81-1282 J.S. App. 28a-76a). It reasoned that issues concerning the interpretation of Article V were not "textually * * * committed" (see *Baker* v. *Carr*, 369 U.S. 186, 217 (1962)) to Congress because Article V divided the power to amend the Constitution between Congress and the states. Therefore, the district court concluded, "[i]t seems more logical that the courts, as a neutral third party, * * * decide these questions raised under Article V" (81-1282 J.S. App. 53a). The court further held that "the efficacy of a rescission and the proper procedure for establishing a time period for ratification are the type of questions that must be interpreted with the kind of consistency that is characteristic of judicial rather than political decision making" (*id.* at 76a; see *id.* at 59a-60a), and determined that neither this Court's decisions nor historical precedents required a different conclusion (*id.* at 63a-73a).

On the merits, the district court concluded that a rescission nullifies a prior ratification because "the subsequent act of rescission * * * promote[s] the democratic ideal by giving a truer picture of the people's will as of the time three-fourths of the states have acted in affirming the amendment" (81-1282 J.S. App. 80a). The court also held that while Congress could act at the time it proposed an amendment to set a period within which states' ratifications would be valid, or could determine after ratifications were received whether they were sufficiently contemporaneous to make the amendment effective, Congress could not extend a period it had previously fixed (see *id.* at 87a-88a). In any event, the court ruled that the determination of the time period—like the pro-

posal of the amendment itself—could be done only by a two-thirds vote of each House of Congress; the simple majorities obtained by H.J. Res. 638 were insufficient (*id.* at 89a-90a).

The district court accordingly entered an order that (81-1282 J.S. App. 94a-95a):

> declares that a state has the power and right to rescind a prior ratification of a proposed constitutional amendment at any time prior to the unrescinded ratification by three-fourths of the states of the United States properly certified to the General Services Administration; and declares that the ratification by Idaho of the [proposed] amendment was properly rescinded and such prior ratification is void, as is the ratification of any other state that has properly rescinded its ratification. The Court further declares that Congress' attempted extension of the time for the ratification of the [proposed] amendment was null and void.

The court declined to issue an injunction, however, saying that in view of its declarations "little [purpose] would be served in granting the plaintiffs' request for an order directing the Administrator of the General Services to return Idaho's ratification papers, and barring him from accepting further ratifications" (*id.* at 92a).

THE QUESTIONS ARE SUBSTANTIAL

This case presents difficult constitutional questions of obvious importance that have not been definitively resolved by this Court. The district court, in addition to declaring invalid a joint resolution of Congress purporting to exercise power under Article V of the Constitution, decided a number of significant

issues arising out of one of the nation's most fundamental political processes. In these circumstances, review by this Court is plainly appropriate.

We do not believe, however, that the Court should now determine the validity of the extension of the time period for ratifying the Equal Rights Amendment or the effect of the rescissions by five states. Indeed, in our view, judicial resolution of these issues by the district court was inappropriate at this time. By June 30, 1982—the end of the extended ratification period specified by Congress—these issues may be moot, or their context may have changed in significant ways. The parties' interests in obtaining a resolution of the issues before that time are not sufficient to warrant judicial intervention.

1. At the threshold, we submit that 28 U.S.C. 1252 gives the Court jurisdiction over this appeal. Section 1252 permits a party to appeal to this Court "from a[] * * * final judgment, decree, or order of any court of the United States * * * holding an Act of Congress unconstitutional in any civil action * * * to which the United States or any of its agencies, or any officer * * * thereof, as such officer * * * is a party." The district court declared unconstitutional H.J. Res. 638, which was passed by majorities in both Houses of Congress and signed by the President. We have taken the position, however, that the President's signature was superfluous because Congress may exercise its power to extend the ratification period simply by a majority vote of each House. See *Hollingsworth* v. *Virginia*, 3 U.S. (3 Dall.) 378, 380 (1798) (Chase, J.) ("The negative of the president applies only to the ordinary cases of legislation: he has nothing to do with the proposition, or adoption of amendments to the constitution."); *Hawke* v. *Smith* (*No. 1*), 253 U.S. 221, 229-230 (1920); H.R.

Rep. No. 95-1405, 95th Cong., 2d Sess. 16-17 (1978); *Equal Rights Amendment Extension: Hearings on H.J. Res. 638 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 95th Cong., 1st & 2d Sess. 17 (1977 & 1978). Under Article I, Section 7, Clause 3 of the Constitution, a Resolution that is neither submitted to the President for his validating signature nor passed over his veto cannot be legislation.

Although H.J. Res. 638 is therefore arguably not legislation, it should, for several reasons, be treated as "an Act of Congress" within the meaning of Section 1252.[a] That Section authorizes direct appeals to this Court because of "[t]he importance to the Nation of prompt determination by the court of last resort of disputed questions of the constitutionality of acts of the Congress * * *." H.R. Rep. No. 212, 75th Cong 1st Sess. 2 (1937). "[I]n § 1252, Congress unambiguously mandated an exception to [the] policy [of narrowly construing the Court's mandatory jurisdiction] * * *. The purpose of § 1252 is too plain to allow circumvention, whatever doubts may be entertained about the wisdom of mandatory direct review in other circumstances." *McLucas* v. *DeChamplain*, 421 U.S. 21, 31 (1975).

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[a] If H.J. Res. 638 is "an Act of Congress" within the meaning of 28 U.S.C. 1252, it is clear that this Court has appellate jurisdiction over this case. This is a civil action in which the Administrator of General Services was sued in his official capacity, and the district court declared H.J. Res. 638 unconstitutional. The Court has noted that "an appeal under § 1252 brings before us, not only the constitutional question, but the whole case * * *." *McLucas* v. *DeChamplain*, 421 U.S. 21, 31 (1975).

In keeping with this policy, the Court has not interpreted Section 1252 technically or narrowly. The Court has, for example, decided on the merits appeals from decisions holding a federal statute unconstitutional without inquiring whether that legislation, as a parliamentary matter (compare 1 U.S.C. 101 with 1 U.S.C. 102), took the form of an act or a joint resolution. Compare *Williams* v. *Zbaraz*, 448 U.S. 358, 366-367 (1980), with *Harris* v. *McRae*, 448 U.S. 297, 302 (1980). See also *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 314 (1936) (involving constitutional validity of a joint resolution). The Court has held that it has jurisdiction over an appeal under Section 1252 where the district court lacked jurisdiction (see *Williams* v. *Zbaraz*, *supra*, 448 U.S. at 367-368; *McLucas* v. *DeChamplain*, *supra*, 421 U.S. at 31-32), where the statute was invalidated only as applied (*United States* v. *Darusmont*, 449 U.S. 292, 293 (1981)), and where the lower court decision could arguably have been read to invalidate only an administrative action, not the underlying statute (see *United States* v. *Rock Royal Co-operative*, 307 U.S. 533 (1939)). See also *United States* v. *Clark*, 445 U.S. 23, 25-26 n.2 (1980).

In *McLucas* v. *DeChamplain*, *supra*, 421 U.S. at 31, the Court explained the basic reason for its generous reading of Section 1252: "The language of the statute sufficiently demonstrates its purpose: to afford immediate review in this Court in civil actions to which the United States or its officers are parties and thus will be bound by a holding of unconstitutionality." The Administrator and, indeed, Congress itself are apparently bound by the district court's ruling. There is no reason to believe that Congress

intended to permit direct review in this Court whenever federal legislation of any description is struck down but not when a court invalidates one of its less frequent but vastly more important contributions to the fundamental process of amending the Constitution.

2. In *Coleman* v. *Miller*, 307 U.S. 433, 450 (1939), this Court stated:

> [T]he question of the efficacy of ratifications [of a proposed constitutional amendment] by state legislatures, in the light of previous rejection or attempted withdrawal, should be regarded as a political question pertaining to the political departments, with the ultimate authority in the Congress in the exercise of its control over the promulgation of the adoption of the amendment.

See also *id.* at 457-460 (opinion of Black, J.); *Goldwater* v. *Carter*, 444 U.S. 996, 1001-1002 n.2 (1979) (opinion of Powell, J.); *id.* at 1002-1005 (opinion of Rehnquist, J.). In addition, the Court in *Coleman* reviewed the history of the ratification of the Fourteenth Amendment and concluded that "the political departments of the Government dealt with the effect both of previous rejection and of attempted withdrawal and determined that both were ineffectual in the presence of an actual ratification." 307 U.S. at 449. As the district court noted (81-1282 J.S. App. 65a-66a), the discussion of rescission in *Coleman* was dictum, because no attempted rescission was before the Court. The district court also disagreed with the *Coleman* Court's reading of the history of the Fourteenth Amendment (see *id.* at 67a-72a). Nevertheless, the Court's statements in *Coleman*—coupled with the fact that rescission is nowhere mentioned in Article V—suffice to create a substantial question

whether the courts may require Congress to give effect to state rescissions.

Similarly, this Court has stated—and the district court agreed (81-1282 J.S. App. 87a-88a)—that Congress may determine, at least within the limits of reasonableness, the period of time within which ratifications will be effective either when it is proposing an amendment (*Dillon* v. *Gloss*, 256 U.S. 368, 374-376 (1921)) or by deciding whether to accept ratifications and declare the amendment adopted (*Coleman* v. *Miller*, *supra*, 307 U.S. at 452-454). As the district court pointed out, when no limit is specified in the proposal, Congress's power to determine whether ratifications were received within a reasonable time rests on its ability to "apprais[e] * * * a great variety of relevant conditions, political, social and economic," in order to decide whether "the proposal [is] no longer responsive to the conception which inspired it" (*Coleman* v. *Miller*, *supra*, 307 U.S. at 453). But this Court has never addressed the question whether, when the proposing Congress has specified a time limitation, that determination binds all later Congresses and can be enforced judicially against them. Indeed, the Court appears never to have considered a ratification period that was specified in the preamble of the proposed amendment and that did not by its terms provide that the amendment would fail if not adopted within the specified period.[4] Moreover, Article V of the Constitution,

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[4] *Dillon v. Gloss*, *supra*, involved Section 3 of the Eighteenth Amendment, which provided:

> This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the

while specifying that a two-thirds vote of both Houses is required in order to "propose Amendments to this Constitution," is silent on whether anything more than a majority vote is required for any other exercise of congressional authority under Article V, such as extension of a time limitation for ratifications.[5]

3. In our view, judicial resolution of issues of this difficulty and importance is inappropriate at this time. The issues were not ripe for decision by the district court, and for similar reasons it would be premature for this Court to address them. By June 30, 1982, if three additional states have not ratified the proposed Amendment, all the issues presented in this case will be moot. If 38 states have ratified and not rescinded their ratifications, the rescission question will be moot. The ripeness doctrine is designed

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Constitution, within seven years from the date of the submission hereof to the States by the Congress.

The preamble of the resolution proposing the Equal Rights Amendment provided only that the Amendment "shall be valid * * * when ratified by the legislatures of three-fourths of the several States within seven years * * *."

[5] It is also far from clear that plaintiffs have standing to bring this suit. The district court granted them standing to challenge H.J. Res. 638, for example, on the basis of their assertion—which the district court accepted as true without ever requiring plaintiffs to establish—that Idaho's ratification was intended to expire in March 1979, so that treating it as valid after that date would misconstrue the ratification. But it goes far beyond *Coleman* v. *Miller*, *supra*—and is indeed quite implausible—to suggest that a legislator has standing to sue any official who allegedly misinterpreted a measure for which the legislator voted. In addition, as we explain (see pages 13-14, *infra*), plaintiffs appear unable to show any "distinct and palpable injury" at this time (*Warth* v. *Seldin*, 422 U.S. 490, 501 (1975)).

precisely to "avoid[] the decision of an issue which may be mooted before the decision is anything but advisory in character." *Dyer* v. *Blair*, 390 F. Supp. 1287, 1290 (N.D. Ill. 1974) (three-judge court). Even if none of the issues presented here becomes moot, the proposed Amendment will, by its own terms, not become effective for two years after ratification; this is ample time in which to resolve any justiciable issues concerning its validity. To decide these issues now would "ignore[] this Court's oft-repeated admonition that the constitutionality of [Congress's actions] ought not be decided except in an actual factual setting that makes such a decision necessary" (*Hodel* v. *Virginia Surface Mining & Reclamation Association*, No. 79-1538 (June 15, 1981), slip op. 28), and would break with the "considered practice not to decide * * * contingent questions * * * or to decide any constitutional question in advance of the necessity for its decision" (*Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, 461 (1945)).

Moreover, none of the parties "endeavor[ing] to obtain a court's assurance [about] * * * hypothetical situations that may or may not" occur (*International Longshoremen's Union, Local 37* v. *Boyd*, 347 U.S. 222, 224 (1954)) has identified a sufficient interest in obtaining a resolution of these fundamental constitutional questions at this time. There is no "general right * * * to institute in the federal courts a suit to secure * * * a determination whether a statute if passed, or a constitutional amendment about to be adopted, will be valid." *Fairchild* v. *Hughes*, 258 U.S. 126, 129-130 (1922). The possibility that a decision might be used or misused in a political controversy, or might influence the way in

which a legislature allocates its time, is always present. If that possibility alone could justify judicial intervention, courts would have nearly unlimited power to issue advisory opinions.[6] See *Dyer* v. *Blair*, *supra*, 390 F. Supp. at 1289. The injury identified by the plaintiffs—that the Administrator continues to list Idaho and other states in a way that suggests that he might, if certain contingencies occur, take action in the future that the plaintiffs consider unconstitutional—is plainly insufficient to require judicial resolution. See *Laird* v. *Tatum*, 408 U.S. 1, 13 (1972). In these circumstances, there is no reason for this Court to strain to find the issues ripe for decision. See *Abbott Laboratories* v. *Gardner*, 387 U.S. 136, 149-154 (1967); *Poe* v. *Ullman*, 367 U.S. 497, 509 (1961) (plurality opinion of Frankfurter, J.). "[T]he role of the judiciary in a government premised upon a separation of powers * * * precludes interference by courts with legislative and executive functions which have not yet proceeded so far as to affect individual interests adversely." *Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1, 72 (1961).[7]

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[6] Similarly, the fact that a lower court has improvidently proceeded prematurely to resolve issues presented in an essentially advisory posture is not a reason for this Court to compound the error by reviewing those still advisory questions on the merits.

[7] Although this Court and other federal courts have decided cases concerning constitutional amendments (see 81-1282 J.S. App. 26a), most of those cases arose after the amendment in issue had been ratified. See, *e.g.*, *United States* v. *Sprague*, 282 U.S. 716 (1931); *Leser* v. *Garnett*, 258 U.S. 130 (1922); *Dillon* v. *Gloss*, 256 U.S. 368 (1921); *National Prohibition Cases*, 253 U.S. 350 (1920); *Hawke* v. *Smith* (*No. 1*), 253

Finally, events may occur between now and the time the ratification process is concluded that would significantly change the issues presented by this case or even resolve them. The House report accompanying H.J. Res. 638 states that "the appropriate time in which to consider the validity of rescissions is

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U.S. 221 (1920); *Hollingsworth* v. *Virginia*, 3 U.S. (3 Dall.) 378 (1798). Other cases involved challenges to a state's internal ratifying procedures (see, *e.g.*, *Hawke* v. *Smith* (*No. 2*), 253 U.S. 231 (1920); *Dyer* v. *Blair*, 390 F. Supp. 1291 (N.D. Ill. 1975)), in which the parties had an interest in knowing, before three-fourths of the states had arguably ratified, the mode of ratification they should pursue; it would be unreasonable, for example, to expect proponents and opponents of a proposed amendment to contest the issue before the state legislature, in a referendum (see *Hawke* v. *Smith* (*No. 2*), *supra*), or in a convention (see generally *United States* v. *Sprague*, *supra*), all in order to protect against the possibility that, when a sufficient number of states had ratified, they would be found to have chosen the wrong mode.

So far as we can determine, only in *Coleman* v. *Miller*, *supra*, did the Court consider an issue comparable to those presented here before the ratification process was complete. Not only did *Coleman* not discuss ripeness (see *Hagans* v. *Lavine*, 415 U.S. 528, 535 n.5 (1974)), but the Court may well have considered the ground on which it decided the Article V issue—that it presented a nonjusticiable political question—to be analytically prior to ripeness. See generally *Schlesinger* v. *Reservists Committee to Stop the War*, 418 U.S. 208, 215 & n.5 (1974); Brief for the United States as Amicus Curiae at 43, *Coleman* v. *Miller*, 307 U.S. 433 (1939). The Court in *Coleman* was reviewing a state court decision; a decision that the issues were not ripe would presumably have allowed the state decision to stand (see *Poe* v. *Ullman*, *supra*; *Doremus* v. *Board of Education*, 342 U.S. 429 (1952)), while the decision that it presented a political question apparently barred judicial interference even by state courts. See 307 U.S. at 456. See generally *Goldwater* v. *Carter*, *supra*, 444 U.S. at 1005 n.2 (opinion of Rehnquist, J.).

when the time comes for Congress to determine whether in fact three-fourths of the States have ratified the amendment." H.R. Rep. No. 95-1405, 95th Cong., 2d Sess. 12 n.8 (1978).[8] Should Congress decide not to accept ratifications from states that have rescinded, or from states that ratified after March 1979, the context of the issues presented here would be, at the least, radically altered; such actions by Congress may even have the effect of according plaintiffs all the relief they seek.

Federal courts will not, in general, interrupt another proceeding at the behest of a party who may gain complete relief in that proceeding, or when that proceeding may significantly refine or alter the issue. This rule applies to state enforcements actions (see, *e.g.*, *Younger* v. *Harris*, 401 U.S. 37 (1971)), to courts-martial (see *Schlesinger* v. *Councilman*, 420 U.S. 738 (1975)), and to administrative proceedings (see *Christian* v. *New York Department of Labor*, 14 U.S. 614, 622 (1974)). There is every reason to apply this same principle to the political process of

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[8] When rejections and rescissions precipitated a dispute over whether the Fourteenth Amendment was properly ratified by three-fourths of the states, Congress resolved it by concurrent resolution. See *Coleman* v. *Miller*, *supra*, 307 U.S. at 449. This Court has referred to "the ultimate authority [of] the Congress in the exercise of its control over the promulgation of the adoption of [an] amendment" to determine "the efficacy of ratifications by state legislatures, in the light of previous rejection or attempted withdrawal" (*Coleman* v. *Miller*, *supra*, 307 U.S. at 450). The Court has also spoken of "[t]he decision by the Congress, in its control of the action of the Secretary of State [who previously exercised the authority now vested in the Administrator by 1 U.S.C. 106b], of the question whether [an] amendment had been adopted within a reasonable time * * *" (307 U.S. at 454).

ratification (see *Dillon* v. *Gloss*, *supra*, 256 U.S. at 374-375 ("proposal and ratification are * * * succeeding steps in a single endeavor")), particularly when the issues are so fundamental and the burdens on the parties seeking relief are so slight.[9] See *Goldwater* v. *Carter*, *supra*, 444 U.S. at 997-998 (Powell, J., concurring); *United States* v *American Telephone & Telegraph Co.*, 551 F.2d 384, 393 & n.16 (D.C. Cir. 1976). See also *Hutcheson* v. *United States*, 369 U.S. 599, 612 (1962) (plurality opinion of Harlan, J.).

4. For the reasons stated above, we submit that the substantive and political question issues presented in this case are not ripe for judicial resolution. Although those issues are substantial, it would be premature for this Court to consider them at this time.

These same prudential and Article III considerations were fully applicable when this case was in the district court, and the Administrator urged the district court not to act on the case for that reason. Accordingly, in our view, the court below erred by passing on the plaintiffs' constitutional claims when those claims were not ripe for review. This question of ripeness, unlike the other issues raised by this appeal, *is* ripe at this time (see *Goldwater* v. *Carter*, *supra*, 444 U.S. at 997-998 (Powell, J., concurring)) and could well escape review altogether if its consideration were postponed. We believe that this issue may appropriately be decided by the Court without further briefing or oral argument—particularly in

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[9] In these circumstances, the premature issuance by a federal court of declaratory or injunctive relief to interrupt the ongoing process is, at the least, an abuse of equitable discretion.

light of the fact that this issue is presented in the narrow context of a proposed amendment that, by its terms, would not take effect until two years after ratification.[10]

CONCLUSION

Probable jurisdiction should be noted, but the Court should not schedule briefing on issues other than ripeness until after June 30, 1982, at which time the proper disposition may be to vacate the judgment of the district court as moot.

Respectfully submitted.

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JANUARY 1982

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[10] In light of these considerations, the Court may wish to consider vacating the judgment of the district court on ripeness grounds and remanding the case to that court with instructions to withhold decision until the issues become either ripe for adjudication or moot.

* The Solicitor General is disqualified in this case.

Appendix

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

Civil Action No. 79-1097

THE STATE OF IDAHO, ET AL., PLAINTIFFS

CLAUDE L. OLIVIER, ETC., ET AL.,
PLAINTIFF-INTERVENORS

v.

REAR ADMIRAL ROWLAND G. FREEMAN III,
Administrator of General Services, DEFENDANT

NATIONAL ORGANIZATION FOR WOMEN, ET AL.,
DEFENDANT-INTERVENORS

[Filed on Jan. 6, 1982]

NOTICE OF APPEAL

Notice is hereby given that the federal defendant hereby appeals to the Supreme Court of the United States, pursuant to Title 28, United States Code, Section 1252, from the order of the District Court entered in this action on December 23, 1981.

Dated at Washington, D.C., this 5th day of January, 1982.

Respectfully submitted,

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APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

Civil Action No. 79-1097

THE STATE OF IDAHO, ET AL., PLAINTIFFS

CLAUDE L. OLIVIER, ETC., ET AL.,
PLAINTIFF-INTERVENORS

v.

REAR ADMIRAL ROWLAND G. FREEMAN III,
Administrator of General Services, DEFENDANT

NATIONAL ORGANIZATION FOR WOMEN, ET AL.,
DEFENDANT-INTERVENORS

[Filed on Jan. 6, 1982]

AMENDED NOTICE OF APPEAL

Notice is hereby given that the federal defendant hereby appeals to the United States District Court for the Ninth Circuit from the order of the District Court entered in this action on December 23, 1981.

Respectfully submitted,

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January 6, 1982

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

Civil Action No. 79-1097

THE STATE OF IDAHO, ET AL., PLAINTIFFS

CLAUDE L. OLIVIER, ETC., ET AL., PLAINTIFF-INTERVENORS

v.

REAR ADMIRAL ROWLAND G. FREEMAN III, Administrator of General Services, DEFENDANT

NATIONAL ORGANIZATION FOR WOMEN, ET AL., DEFENDANT-INTERVENORS

[Filed on Jan. 12, 1982]

NOTICE OF APPEAL

Notice is hereby given that the federal defendant hereby appeals to the United States Court of Appeals for the Ninth Circuit from the order of the District Court entered in this action on December 23, 1981.

Respectfully submitted,

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